

² The record provided the Board includes evidence received after OWCP issued its May 24, 2016 decision. However, the Board's jurisdiction is limited to reviewing evidence that was part of the record at the time OWCP issued its final decision. Thus, the Board is precluded from reviewing this evidence on appeal. 20 C.F.R. § 501.2(c)(1).

FACTUAL HISTORY

On September 15, 2015 appellant, a 54-year-old fire chief, filed a traumatic injury claim (Form CA-1). He alleged that he sprained his right shoulder on August 19, 2015 when the foot peg of an elliptical trainer he was moving got caught between the slats of a pallet.

By letter to appellant dated October 6, 2015, OWCP advised him that it required additional factual and medical evidence to determine whether he was eligible for compensation benefits. It noted that he did not provide a statement or description as to how his injury occurred, and asserted that such factual evidence was required to support his claim. OWCP asked appellant to submit a comprehensive medical report from his treating physician describing his symptoms and a medical opinion explaining the cause of any diagnosed condition. It afforded him 30 days to submit the requested evidence.

In an October 28, 2015 memorandum, the employing establishment controverted the claim because appellant did not report the injury by submitting a Form CA-1 within 30 days of the injury.

By decision dated November 10, 2015, OWCP denied the claim finding that appellant failed to meet his burden of proof to establish fact of injury. It explained that he failed to meet the factual component.

On May 10, 2016 appellant requested reconsideration.

Appellant submitted copies of e-mails he exchanged with an employing establishment workers' compensation specialist dated October 28, 2015 and May 3, 4, and 9, 2016. In the May 2016 e-mails, he referenced the October 28, 2015 e-mails. Appellant indicated that he injured his right shoulder, that his condition had not improved, that his neurologist referred him for a magnetic resonance imaging (MRI) scan of his right shoulder, and that he was awaiting an appointment with an orthopedist. He also asked what he needed to do to reopen his case. The workers' compensation specialist advised appellant that the employing establishment had controverted his claim for continuation of pay because he did not file his claim within 30 days of the alleged injury.

By decision dated May 24, 2016, OWCP denied appellant's request for reconsideration as it neither raised substantive legal questions nor included new and relevant evidence sufficient to require it to review the merits of the claim.

LEGAL PRECEDENT

Section 8128(a) of FECA does not entitle a claimant to review of an OWCP decision as a matter of right.³ OWCP has discretionary authority in this regard and has imposed certain limitations in exercising its authority.⁴ One such limitation is that the request for reconsideration

³ This section provides in pertinent part: "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on [his/her] own motion or on application." 5 U.S.C. § 8128(a).

⁴ 20 C.F.R. § 10.607.

must be received by OWCP within one year of the date of the decision for which review is sought.⁵ A timely application for reconsideration, including all supporting documents, must set forth arguments and contain evidence that either: (i) shows that OWCP erroneously applied or interpreted a specific point of law; (ii) advances a relevant legal argument not previously considered by OWCP; or (iii) constitutes relevant and pertinent new evidence not previously considered by OWCP.⁶ When a timely application for reconsideration does not meet at least one of the above-noted requirements, OWCP will deny the request for reconsideration without reopening the case for a review on the merits.⁷

ANALYSIS

The Board finds that, in the present case, appellant has not shown that OWCP erroneously applied or interpreted a specific point of law nor has he advanced a relevant legal argument not previously considered by OWCP. The Board has held that the submission of evidence which does not address the particular issue involved in the case does not constitute a basis for reopening the claim.⁸ The evidence appellant submitted in connection with his reconsideration request, however, is not pertinent to the issue on appeal; *i.e.*, whether appellant has established that he sustained an injury on August 19, 2015 in the performance of his federal employment at the time, place, and in the manner alleged.⁹ The October 2015 and May 2016 e-mails appellant submitted did not contain a statement or description as to how appellant's alleged right shoulder injury occurred on August 19, 2015, as requested by OWCP. Appellant's reconsideration request failed to show that OWCP erroneously applied or interpreted a point of law nor did it advance a point of law not previously considered by OWCP. OWCP did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits in its May 24, 2016 decision.

CONCLUSION

The Board finds that OWCP properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

⁵ *Id.* at § 10.607(a). For merit decisions issued on or after August 29, 2011, a request for reconsideration must be "received" by OWCP within one year of the OWCP decision for which review is sought. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4 (February 2016). Timeliness is determined by the document receipt date of the request for reconsideration as indicated by the "received date" in the integrated Federal Employees' Compensation System (iFECS). *Id.* at Chapter 2.1602.4b.

⁶ 20 C.F.R. § 10.606(b)(3).

⁷ *Id.* at § 10.608(a), (b).

⁸ *See David J. McDonald*, 50 ECAB 185 (1998).

⁹ *See Patricia G. Aiken*, 57 ECAB 441 (2006).

ORDER

IT IS HEREBY ORDERED THAT the May 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 25, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board